

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Martin Vogel,

Plaintiff,

V.

CP Lyons Station SC LLC, a Delaware Limited Liability Company; **Southern California Pizza Company, LLC**, a Delaware Limited Liability Company; and Does 1-10,

Defendants.

Case No.

Complaint For Damages And Injunctive Relief For Violations Of: American's With Disabilities Act; Unruh Civil Rights Act

Plaintiff Martin Vogel complains of CP Lyons Station SC LLC, a Delaware Limited Liability Company; Southern California Pizza Company, LLC, a Delaware Limited Liability Company; and Does 1-10 (“Defendants”) and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a T3 paraplegic who cannot walk and who uses a wheelchair for mobility.

1 2. Defendant CP Lyons Station SC LLC owned the real property located at
2 or about 23430 Lyons Avenue, Newhall, California, in November 2018.

3 3. Defendant CP Lyons Station SC LLC owns the real property located at
4 or about 23430 Lyons Avenue, Newhall, California, currently.

5 4. Defendant Southern California Pizza Company, LLC owned Pizza Hut
6 located at or about 23430 Lyons Avenue, Newhall, California, in November
7 2018.

8 5. Defendant Southern California Pizza Company, LLC owns Pizza Hut
9 located at or about 23430 Lyons Avenue, Newhall, California, currently.

10 6. Plaintiff does not know the true names of Defendants, their business
11 capacities, their ownership connection to the property and business, or their
12 relative responsibilities in causing the access violations herein complained of,
13 and alleges a joint venture and common enterprise by all such Defendants.
14 Plaintiff is informed and believes that each of the Defendants herein,
15 including Does 1 through 10, inclusive, is responsible in some capacity for the
16 events herein alleged, or is a necessary party for obtaining appropriate relief.
17 Plaintiff will seek leave to amend when the true names, capacities,
18 connections, and responsibilities of the Defendants and Does 1 through 10,
19 inclusive, are ascertained.

20

21 **JURISDICTION & VENUE:**

22 7. The Court has subject matter jurisdiction over the action pursuant to 28
23 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
24 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

25 8. Pursuant to supplemental jurisdiction, an attendant and related cause
26 of action, arising from the same nucleus of operative facts and arising out of
27 the same transactions, is also brought under California's Unruh Civil Rights
28 Act, which act expressly incorporates the Americans with Disabilities Act.

1 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
2 founded on the fact that the real property which is the subject of this action is
3 located in this district and that Plaintiff's cause of action arose in this district.
4

5 **FACTUAL ALLEGATIONS:**

6 10. Plaintiff went to Pizza Hut in November 2018 to eat.

7 11. Pizza Hut is a facility open to the public, a place of public
8 accommodation, and a business establishment.

9 12. Parking spaces are one of the facilities, privileges, and advantages
10 offered by Defendants to patrons of Pizza Hut.

11 13. Even though there were parking spaces marked and reserved for
12 persons with disabilities next to Pizza Hut during Plaintiff's visit, the parking
13 stalls and access aisle were not level with each other because there was a built
14 up curb ramp running into the access aisle.

15 14. This curb ramp caused slopes greater than 2.1%.

16 15. Meanwhile, even though there were other parking spaces marked and
17 reserved for persons with disabilities who drive vans in the other parts of the
18 shopping center, those parking spaces did not serve Pizza Hut. There were no
19 accessible route from those parking spaces to the Pizza Hut entrance. If
20 plaintiff used the other parking spaces marked and reserved for persons with
21 disabilities in the shopping center, he would have to travel behind parked cars
22 or travel with cars in the vehicular drive paths to make it back to Pizza Hut. This
23 is not accessible for plaintiff.

24 16. Currently, the parking stalls and access aisle are not level with each
25 other.

26 17. Currently, there is no accessible route from the van parking spaces on
27 the other parts of the property that leads back to Pizza Hut.

28 18. Restrooms are another one of the facilities, privileges, and advantages

1 offered by Defendants to patrons of Pizza Hut.

2 19. The restroom door, at the exit, consisted of a front approach to the pull
3 side of a swinging door but there was only a few inches of clearance to the
4 strike side of the door because of a trash can located inside the restroom.

5 20. The toilet stall was improperly configured and too small for wheelchair
6 users, measuring 43 inches in width and 184 inches in depth.

7 21. There was no clear floor space in front of the disposable toilet seat cover
8 dispenser because it was mounted on the wall behind the toilet.

9 22. Currently, the restroom door consists of a front approach to the pull side
10 of a swinging door but there is only a few inches of clearance to the strike side
11 of the door because of a trash can.

12 23. Currently, the toilet stall is improperly configured and too small for
13 wheelchair users, measuring 43 inches in width and 184 inches in depth.

14 24. Currently, there is no clear floor space in front of the disposable toilet
15 seat cover dispenser because it is mounted on the wall behind the toilet.

16 25. Defendants have failed to maintain in operable working condition those
17 features of facilities and equipment that are required to be readily accessible to
18 and usable by persons with disabilities at the Subject Property.

19 26. Plaintiff personally encountered these barriers.

20 27. This inaccessible facility denied the plaintiff full and equal access and
21 caused him difficulty, discomfort, and embarrassment.

22 28. The defendants have failed to maintain in working and useable
23 conditions those features required to provide ready access to persons with
24 disabilities.

25 29. The barriers identified above are easily removed without much
26 difficulty or expense. They are the types of barriers identified by the
27 Department of Justice as presumably readily achievable to remove and, in fact,
28 these barriers are readily achievable to remove. Moreover, there are numerous

1 alternative accommodations that could be made to provide a greater level of
 2 access if complete removal were not achievable.

3 30. For example, there are numerous paint/stripe companies that will come
 4 and stripe a level parking stall and access aisle and install proper signage on
 5 rapid notice, with very modest expense, sometimes as low as \$300 in full
 6 compliance with federal and state access standards.

7 31. Plaintiff will return to Pizza Hut to avail himself of its goods or services
 8 and to determine compliance with the disability access laws. He is currently
 9 deterred from doing so because of his knowledge of the existing barriers. If the
 10 barriers are not removed, the plaintiff will face unlawful and discriminatory
 11 barriers again.

12 32. Given the obvious and blatant nature of the barriers and violations
 13 alleged herein, the plaintiff alleges, on information and belief, that there are
 14 other violations and barriers on the site that relate to his disability. Plaintiff will
 15 amend the complaint, to provide proper notice regarding the scope of this
 16 lawsuit, once he conducts a site inspection. However, please be on notice that
 17 the plaintiff seeks to have all barriers related to his disability remedied. See
 18 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 19 encounters one barrier at a site, he can sue to have all barriers that relate to his
 20 disability removed regardless of whether he personally encountered them).

21

**22 I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
 23 WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all
 24 Defendants.) (42 U.S.C. section 12101, et seq.)**

25 33. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 26 again herein, the allegations contained in all prior paragraphs of this
 27 complaint.

28 34. Under the ADA, it is an act of discrimination to fail to ensure that the

1 privileges, advantages, accommodations, facilities, goods and services of any
2 place of public accommodation is offered on a full and equal basis by anyone
3 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
4 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 5 a. A failure to make reasonable modifications in policies, practices,
6 or procedures, when such modifications are necessary to afford
7 goods, services, facilities, privileges, advantages, or
8 accommodations to individuals with disabilities, unless the
9 accommodation would work a fundamental alteration of those
10 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 11 b. A failure to remove architectural barriers where such removal is
12 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
13 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
14 Appendix “D.”
- 15 c. A failure to make alterations in such a manner that, to the
16 maximum extent feasible, the altered portions of the facility are
17 readily accessible to and usable by individuals with disabilities,
18 including individuals who use wheelchairs or to ensure that, to the
19 maximum extent feasible, the path of travel to the altered area and
20 the bathrooms, telephones, and drinking fountains serving the
21 altered area, are readily accessible to and usable by individuals
22 with disabilities. 42 U.S.C. § 12183(a)(2).

23 35. Under the 2010 Standards, access aisles shall be at the same level as the
24 parking spaces they serve. Changes in level are not permitted. 2010 Standards
25 502.4. “Access aisle are required to be nearly level in all directions to provide
26 a surface for wheelchair transfer to and from vehicles.” 2010 Standards §
27 502.4 Advisory. Specifically, built up curb ramps are not permitted to project
28 into access aisles and parking spaces. *Id.* No more than a 1:48 slope is

1 permitted. 2010 Standards § 502.4.

2 36. Here, the failure to provide level parking near Pizza Hut is a violation of
3 the law.

4 37. Under the ADA, there must be an accessible route from accessible
5 parking spaces to the building entrances they serve. 2010 Standards §
6 206.2.1. If a parking space serves more than one accessible entrance, it must
7 be located on an accessible route to the accessible entrances. 2010 Standards
8 § 208.3.1.

9 38. Here, there were no accessible routes from the van parking spaces on the
10 property to Pizza Hut entrance.

11 39. Where a toilet stall is provided in a restroom in existing facilities, the size
12 and arrangement of the standard toilet stall must be at least 60 inches wide by
13 56 inches deep. 2010 Standards § 604.3.1.

14 40. Here, the toilet area does not comply and is in violation of the law.

15 41. Clear floor space that allows a forward or a parallel approach by a person
16 using a wheelchair shall be provided at controls, dispensers, receptacles, and
17 other operable equipment. 2010 Standards § 309.2.

18 42. Here, the failure to provide such floor space is a violation of the law.

19 43. When the entrance (or exit) requires a front approach to the pull side of
20 a swinging door, there must be a minimum of 18 inches clear floor space to the
21 strike side of the doorway. 2010 Standards § 404.2.4.1.

22 44. Here the failure to provide that strike side clearance in the restroom is a
23 violation.

24 45. The Safe Harbor provisions of the 2010 Standards are not applicable
25 here because the conditions challenged in this lawsuit do not comply with the
26 1991 Standards.

27 46. A public accommodation must maintain in operable working condition
28 those features of its facilities and equipment that are required to be readily

1 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

2 47. Here, the failure to ensure that the accessible facilities were available
3 and ready to be used by the plaintiff is a violation of the law.

4

5 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
6 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
7 Code § 51-53.)

8 48. Plaintiff repleads and incorporates by reference, as if fully set forth
9 again herein, the allegations contained in all prior paragraphs of this
10 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
11 that persons with disabilities are entitled to full and equal accommodations,
12 advantages, facilities, privileges, or services in all business establishment of
13 every kind whatsoever within the jurisdiction of the State of California. Cal.
14 Civ. Code § 51(b).

15 49. The Unruh Act provides that a violation of the ADA is a violation of the
16 Unruh Act. Cal. Civ. Code, § 51(f).

17 50. Defendants’ acts and omissions, as herein alleged, have violated the
18 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
19 rights to full and equal use of the accommodations, advantages, facilities,
20 privileges, or services offered.

21 51. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
22 discomfort or embarrassment for the plaintiff, the defendants are also each
23 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
24 (c).)

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this Court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling Defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act, which provides for actual
9 damages and a statutory minimum of \$4,000 for each offense.

10 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

12

13 Dated: December 17, 2018 CENTER FOR DISABILITY ACCESS



14

15 By: _____

16

17 Chris Carson, Esq.
18 Attorney for plaintiff